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12 Attorneys for Defendants THOMAS ORLOFF,
13 NANCY O'MALLEY, G. RICHARD KLEMMER,
14 DAVID C. BUDDE, THE DISTRICT ATTORNEY'S
OFFICE OF ALAMEDA COUNTY, and
THE COUNTY OF ALAMEDA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

17 DEBORAH J. PIMENTEL,) Case No.: CV 08-00249 MMC
18 Plaintiff,)
19 vs.)
20 THOMAS ORLOFF, NANCY O'MALLEY,)
G. RICHARD KLEMMER, DAVID C.)
BUDDE, THE DISTRICT ATTORNEY'S)
OFFICE OF ALAMEDA COUNTY,)
THE COUNTY OF ALAMEDA, DOES 1-10,)
Defendants.)
ANSWER TO EMPLOYMENT
DISCRIMINATION AND WRONGFUL
TERMINATION COMPLAINT
DEMAND FOR JURY TRIAL
Complaint Filed: January 14, 2008

24 **COMES NOW**, defendants THOMAS ORLOFF, NANCY O'MALLEY, G. RICHARD
25 KLEMMER, DAVID C. BUDDE, THE DISTRICT ATTORNEY'S OFFICE OF ALAMEDA
26 COUNTY, and THE COUNTY OF ALAMEDA, , and for their answer to the unverified complaint
27 of plaintiff on file herein, admit, deny and allege as follows:

1 1. Answering the allegations of numbered paragraphs 1, 5, and 6 of said complaint,
 2 defendants lack information and belief sufficient to admit or deny the allegations contained in said
 3 paragraphs, and, based upon such lack of information and belief, defendants deny said allegations.

4 2. Answering the allegations of numbered paragraphs 2, 3, and 4 of said complaint,
 5 defendants admit the allegations of said paragraphs to the extent that they list business addresses
 6 (rather than residence addresses) of the defendants therein.

7 3. Answering the allegations of numbered paragraphs 7, 8, 9, 10, 11, and 12 of said
 8 complaint, defendants deny each and every and all of the allegations of said paragraphs and further
 9 deny that plaintiff has sustained any injuries, losses or damages of any kind or character as a result
 10 of any conduct on the part of these answering defendants.

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SEPARATE AFFIRMATIVE DEFENSES

13 **AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 14 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION CONTAINED**
 15 **THEREIN**, these answering defendants allege that neither the complaint, nor any of the purported
 16 cause of action contained therein, states facts sufficient to constitute a cause of action against these
 17 answering defendants.

18 **AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 19 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION CONTAINED**
 20 **THEREIN**, these answering defendants allege that the plaintiff has failed to mitigate her damages,
 21 and said failure has proximately contributed to the event and damages alleged in her complaint.

22 **AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 23 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION CONTAINED**
 24 **THEREIN**, defendants assert that plaintiff's claims are barred, in whole or in part, because
 25 plaintiff has failed to comply with all jurisdictional prerequisites to bringing this action.

26 **AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 27 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION CONTAINED**
 28 **THEREIN**, these answering defendants allege that plaintiff unreasonably delayed bringing this

1 action to the prejudice of defendant, and, by reason thereof, their claims are barred by the doctrine
 2 of laches.

3 **AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 4 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION CONTAINED**
 5 **THEREIN**, these answering defendants allege that plaintiff's action is barred by the applicable
 6 statute of limitations, including without limitation that set forth in California Code of Civil
 7 Procedure section 335.1.

8 **AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 9 **AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 10 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF**, these
 11 answering defendants are informed and believe and thereon allege that by reason of plaintiff's own
 12 acts and omissions, plaintiff is estopped from seeking any recovery from defendants by reason of
 13 the allegations set forth in the complaint.

14 **AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
 15 **THE COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF**, these
 16 answering defendants allege that they are not liable for any acts or omissions of their
 17 employees which occurred outside of those employees' scope of employment.

18 **AS AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
 19 **THE COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF**, these
 20 answering defendants allege that plaintiff's claim is barred under the doctrine set forth in the
 21 U.S. Supreme Court's decision in *McMillian v. Monroe County* (1997) 117 S. Ct. 1734 and the
 22 Eleventh Amendment to the U.S. Constitution in that in engaging in the conduct complained of, if
 23 it occurred at all, defendants were acting in the capacities as officers of the State of California and
 24 not the County of Alameda.

25 **AS A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 26 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF**, these
 27 answering defendants allege that at all times mentioned in the complaint, defendants performed
 28 and discharged in good faith each and every obligation, if any, owed to plaintiff.

1 **AS A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
2 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF,** these
3 answering defendants allege that at all times material to this action, defendants and their
4 employees had reasonable cause to act and acted properly in their activities in relationship to
5 plaintiff.

6 **AS AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
7 **THE COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF,** these
8 answering defendants allege that at all times relevant to plaintiff's complaint herein, plaintiff
9 knowingly, voluntarily and willingly consented to any search, if, in fact, any search was
10 performed.

11 **AS A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
12 **THE COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF,** these
13 answering defendants are informed and believe and thereon allege that by conduct,
14 representations and omissions, plaintiff has waived, relinquished and/or abandoned any claim for
15 relief against these defendants respecting the matters which are the subject of the complaint.

16 **AS A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
17 **THE COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF,** these
18 answering defendants allege that they were at all times acting without malice and in good
19 faith and therefore are entitled to immunity from suit.

20 **AS A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
21 **TO THE COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
22 **THEREOF,** these answering defendants are informed and believe and thereon allege that any
23 damages sustained by plaintiff were either wholly, or in part, negligently caused by persons, firms,
24 corporations or entities other than these answering defendants, and said actions comparatively
25 reduces the percentage of liability, if any, by these answering defendants.

26 WHEREFORE, the defendants pray that:

- 27 1. The complaint be dismissed with prejudice;
28 2. That the plaintiff be awarded nothing by her complaint;

3. That the defendants be awarded their costs of suit and attorneys' fees; and
 4. That the court order such additional relief as it may deem just and proper.

DATED: September 3, 2008

BOORNAZIAN, JENSEN & GARTHE
A Professional Corporation

By: /s/ Jill P. Sazama, Esq.

JILL P. SAZAMA, ESQ.,

Attorneys for Defendants

THOMAS ORLOFF, NANCY
O'MALLEY, G. RICHARD
KLEMMER, DAVID C. BUDDE,
THE DISTRICT ATTORNEY'S
OFFICE OF ALAMEDA COUNTY,
and THE COUNTY OF ALAMEDA

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury of any and all claims that can be so tried.

DATED: September 3, 2008

BOORNAZIAN, JENSEN & GARTHE
A Professional Corporation

By: /s/ Jill P. Sazama, Esq.

JILL P. SAZAMA, ESQ.

Attorneys for Defendants

THOMAS ORLOFF, NANCY
O'MALLEY, G. RICHARD
KLEMMER, DAVID C. BUDDE,
THE DISTRICT ATTORNEY'S
OFFICE OF ALAMEDA COUNTY,
and THE COUNTY OF ALAMEDA

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**CERTIFICATE OF SERVICE
(28 U.S.C. §1746)**

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P. O. Box 12925, Oakland, California 94604-2925.

I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. On the date indicated below, at the above-referenced business location, I sealed envelopes, enclosing a copy of the **ANSWER TO EMPLOYMENT DISCRIMINATION AND WRONGFUL TERMINATION COMPLAINT**, addressed as shown below, and placed them for collection and mailing following ordinary business practices to be deposited with the United States Postal Service on the date indicated below:

Plaintiff in Pro Per
Deborah J. Pimentel
6644 Wooster Court
Castro Valley, CA 94552
Telephone: 510-886-8933

Via Mail

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California, on September 3, 2008

By: /s/ Carmen Kalt
Carmen Kalt

PROOF OF SERVICE BY ELECTRONIC SERVICE

I, the undersigned, declare as follows:

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P. O. Box 12925, Oakland, California 94604-2925.

On the date indicated below, at the above-referenced business location, I served the on the
below-named party and caused said document to be transmitted using ECF as specified by General
Order No. 45 to the following party:

Co-Counsel
Richard E. Winnie, Esq.
County Counsel
Diane C. Graydon, Esq.
Deputy County Counsel
County of Alameda, Off
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1221 Oak Street, Suite 4
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Telephone: (510) 272-6
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Attorneys for Defendants THOMAS ORLOFF,
NANCY O'MALLEY, G. RICHARD
KLEMMER,
DAVID C. BUDDE, THE DISTRICT
ATTORNEY'S
OFFICE OF ALAMEDA COUNTY, and
THE COUNTY OF ALAMEDA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California, on September 3, 2008.

By: _____ /s/ Carmen Kalt
Carmen Kalt

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